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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 784

UNITED STATES OF AMERICA, ex rel. MAURICE GOLDSTEIN, alias MAURICE GOLD, and JACK S. GUTHMAN,

Petitioners,

vs.

JOSEPH D. LOHMAN, Sheriff of Cook County, Illinois,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on January 22, 1958.

CITATION TO OPINION BELOW.

The opinion of the Court of Appeals is unreported and is printed in Appendix "B" hereto, Page 2a.

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), since the validity of a State's Statute on grounds of repugnancy to the Constitution of the United States is in question.

QUESTIONS PRESENTED.

1. Whether former Chapt. 60, Sec. 2, Ill. Rev. Stat., 1951, known as the "Fugitives From Justice Act", as interpreted by the Supreme Court of the State of Illinois, is repugnant to Art. IV, Sec. II, Clause 2, of the Constitution of the United States;

2. Whether by reason of the scope of permissible hearing in a habeas corpus proceeding under Illinois extradition law, as limited by the Illinois Supreme Court's interpretation of the foregoing section, the Petitioner's rights of substantive and procedural due process under the 14th Amendment to the Constitution of the United States have been violated.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED.

The constitutional provision involved is Art. IV, Sec. II, Clause 2 of the Constitution of the United States. It is printed in Appendix A, *infra*, P. 1a. The statutory provision involved is Chap. 60, Sec. 2, Ill. Rev. Stat., 1951. It is also printed in Appendix A, *infra*. P. 1a.

STATEMENT.

Extradition proceedings for the rendition of Petitioners to the State of Ohio commenced on February 9, 1953, by an extradition warrant issued by the Governor of Illinois. The Petitioners procured a Writ of Habeas Corpus from the Criminal Court of Cook County; following a trial on August 6, 1953, the Writ was quashed and the Petitioners remanded to the custody of the Respondent, Sheriff of Cook County, to be delivered to the agent of the State of Ohio. On trial, Petitioners attempted, by cross examination of the State's witness to ascertain the nature of the transaction alleged by him to have been the basis

of the indictment. The State's witness testified that the Petitioners were in Ohio on the date alleged in the indictment. The trial court ruled that once it was shown that Petitioners were in the demanding State on the date alleged in the indictment, this was sufficient for rendition. On appeal to the Illinois Supreme Court, the trial court's ruling was affirmed, 4 Ill. 2d, 483, in reliance upon Chap. 60, Sec. 2 of the Ill. Rev. Stats. (App. A). This statute permitted a Petitioner to show only that "he [petitioner] is not a fugitive from justice of the demanding State, *i.e.*, that he was not physically present in the demanding State on or about the date upon which the offense with which he is charged is alleged to have been committed . . ." The United States Supreme Court denied certiorari, 349 U.S. 928. On May 18, 1955, the Petitioners filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Illinois, Eastern Division. They contended that the aforesaid Chap. 60, Sec. 2, as interpreted by the Supreme Court of Illinois, so improperly limited the hearing sought by the Petitioners in an extradition proceeding as to violate their constitutional right and to deprive them of their liberty without due process of law in violation of Amendment 14 to the Constitution of the United States, and further, that said section, as interpreted, is repugnant to and in violation of Art. IV, Sec. II, Clause 2, of the Constitution of the United States. The District Court, following the submission of typewritten briefs, on April 25, 1957, dismissed the petition. No trial was obtained. The Petitioners in their brief maintained that the statute as interpreted by the Illinois Supreme Court could result in extradition for an offense which was not extraditable —a crime only constructively committed in Ohio. This was so because: (a) under that interpretation if peti-

tioners were shown to be present in Ohio on the date alleged in the indictment this was sufficient for extradition, (b) even though their presence there was for an entirely different purpose and (c) even though the indictment itself (though not on its face) assumed a crime constructively committed in Ohio. The Circuit Court of Appeals affirmed (see opinion, App. B, *infra*) stating in part, that: "Upon a trial in that State (Ohio) if they are confronted with evidence that the crime for which they were indicted, was only constructively committed in Ohio, that matter may then be considered. Its mere anticipation by Petitioners is not sufficient to support them in this appeal." The Court further held that no federal constitutional rights of Petitioners had been violated.

REASONS FOR GRANTING THE WRIT.

The authority of a State to extradite is granted by Art. IV, Sec. 2, Clause 2, of the United States Constitution. Only a person who fled, *i.e.*, who was present in the demanding State, who allegedly committed the crime, and then left the State, could be extradited under this constitutional provision. *Hyatt* v. *Corkran*, 188 U.S. 691, 712; *Strassheim* v. *Daily*, 221 U.S. 280, 285. At the time of Petitioners' arrest, Illinois had not yet enacted the Uniform Criminal Extradition Act permitting extradition for crimes only constructively committed within the demanding jurisdiction. Thus, at the time of Petitioners' arrest, extradition for the commission of a crime only constructively committed in the demanding jurisdiction would be the deprivation of liberty in the complete absence of constitutional authority, or enabling legislation.

In order for a petitioner to show that the indictment is predicated upon a constructively committed crime, the latitude of hearing must be broad enough to permit such

proof. *Hyatt* v. *Corkran*, 188 U.S. 691, permitted the petitioner to attempt to prove "by admissions . . . or other conclusive evidence, that the charge upon which extradition is demanded assumes the absence of the accused persons from the state at the time the crime was, if ever, committed."

Petitioners attempted to make this showing upon their extradition hearing. They were forbidden to do so because of the interpretation placed upon the Illinois statute which forecloses *any inquiry if* the petitioner is shown to be in the demanding state on the date alleged in the indictment, *even though*, if inquiry were permitted, it could be shown that the indictment charges a constructively committed crime.

The opinion of the Circuit Court of Appeals, in essence, approves this statutory application when it acknowledges that petitioners cannot argue that they are being extradited for the commission of a crime constructively committed in the demanding jurisdiction once the evidence sufficiently establishes their personal presence in the demanding state on the date alleged in the indictment. If, as the opinion of the court states, they must await confrontation with such evidence until removal to the demanding jurisdiction, they will then no longer be in a position to make this argument. The question will have become moot and the petitioners will have been extradited in the complete absence of any executive or legislative authority.

CONCLUSION.

For the foregoing reason this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Following is Article IV, Section II of the Constitution f the United States:

> "A person, charged in any State, with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

The relevant portion of Chapter 60, Sec. 2, Ill. Rev. Stat. (1951) known as the Fugitives from Justice Act, follows:

> "Any such officer or person may, at the expense of the agent making the demand, execute such warrant anywhere within this state, and require aid as in criminal cases, and may convey such fugitive to any place within this state which the executive in his warrant shall direct, and deliver such fugitive to such agent: Provided, however, that any person so apprehended shall not be delivered into the custody of such agent of the demanding state without first being produced in the circuit court of the county wherein he is arrested, or if arrested in the county of Cook, in the criminal court of Cook County. The judge of the court in which such person is produced shall, in open court, inform the person apprehended of the cause of his arrest, the nature of the process, and inform him that if he claims * * * *(4) that he is not a fugitive from justice of the demanding state, i.e., that he was not physically present in the demanding state on or about the date upon which the offense with which he is charged is alleged to have been committed,* he may have a writ of habeas corpus upon filing an affidavit to that effect, and is entitled to reasonable delay to obtain counsel and avail himself of the laws of this state for the security of personal liberty * * *" (Emphasis supplied).

APPENDIX B.

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 12069 September Term, 1957 January Session, 1958.

United States of America, ex rel. Maurice Goldstein, alias Maurice Gold, and Jack S. Guthman, Petitioners, v. Joseph D. Lohman, Sheriff of Cook County, Illinois, Respondent.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

January 22, 1958

Before Major, Schnackenberg and Hastings, Circuit Judges.

Schnackenberg, Circuit Judge. The above-entitled habeas corpus proceeding was docketed in the district court on May 18, 1955.[1]

The record reveals that petitioners were indicted in Cuyahoga county, Ohio, for a crime referred to as "larceny by trick", alleged to have been committed on April 7, 1950, in said county, and that, for nearly the last 5 years, petitioners have been resisting, by litigation in

[1] Confusingly petitioners' counsel in this court persist in entitling the case "People of the State of Illinois, ex rel.", etc.

various courts, their extradition from Illinois to Ohio. Requisition papers having been issued by the governor of Ohio. followed by an extradition warrant issued by the governor of Illinois, petitioners were on February 9, 1953 taken into custody and brought by respondent before the Criminal Court of Cook County, Illinois. pursuant to a writ of habeas corpus from said court procured by them. Following a trial on August 6, 1953, that court quashed the writ and remanded petitioners to the custody of respondent, to be delivered to the agent of the state of Ohio. Petitioners appealed to the Illinois Supreme Court,[1] which affirmed, 4 Ill. 2d 483. The United States Supreme Court denied certiorari, 349 U.S. 928. This proceeding was then instituted in the district court. That court, following the submission of typewritten briefs, on April 25, 1957 dismissed the petition and this appeal followed.

Petitioners argue that their rights under clause 2 of section 2 of article IV and also under the fourteenth amendment of the constitution of the United States have been violated by the interpretation by the Supreme Court of Illinois of section 2, chapter 60, Ill. R. S., 1951. They say that, in *People, ex rel. Goldstein*, v. *Babb, Sheriff*, 4 Ill. 2d 483, said section 2 has been interpreted to mean that, once the presence of the alleged fugitive is established in the demanding state on the date alleged in the indictment, this is sufficient for a remandment.

Respondent insists that there has been no violation of any constitutional rights of pettiioners.

It appeared on the trial in the Criminal Court of Cook County that the complaining witness, John DeRocca, a resident of Cleveland, Ohio, in direct examination, identified the petitioners, and testified that he had business relationships with them, and that they were at his home in Cleveland on April 7, 1950. DeRocca's wife also testified that petitioners were at their home in Cleveland

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[1] More confusion is contributed by petitioners' counsel who now refer to said appeal as a writ of error.

on that day. Each of the petitioners testified in his own behalf, and denied having been in Cleveland on the day in question. Upon cross-examination of the witness DeRocca, petitioners' counsel attempted to show what had occurred in 1950. The court sustained objections to these questions, and stated: "Whether this warrant is good or bad I don't know, but I am only concerned with whether or not they were in the State of Ohio and the City of Cleveland at the time this was charged."

On the face of this evidence, we fail to see how petitioners are in a position to defeat this extradition proceeding by arguing, as they do, that there is here an attempt to extradite them for the commission of a crime constructively committed in the demanding jurisdiction. The evidence above referred to sufficiently established for the purpose of extradition that they were personally present in Ohio on the date in question. Upon a trial in that state, if they are confronted with evidence that the crime for which they were indicted, was only constructively committed in Ohio, that matter may then be considered. Its mere anticipation by petitioners is not sufficient to support them in this appeal.

No federal constitutional rights of petitioners have been violated in the extradition proceedings against them.

Petitioners also contend that without motion by the state's attorney and without permitting any hearing, the district court had no power to dismiss the petition. Both petitioners and respondent filed briefs. In petitioners' brief they admit that it was established by the state that petitioners were in the home of the complaining witness in Ohio on April 7, 1950. In view of their admission and the allegations in their petition in the district court, it became apparent to that court that they were not entitled to relief in this proceeding. No trial was necessary and the court justifiably dismissed the petition for habeas corpus. He thereby hastened, to at least a perceptible degree, the day when these prolonged extradition proceedings will be terminated.

We find no error in this record and the judgment of the district court is affirmed.

Affirmed.